

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JUAN ANTONIO CAVAZOS,)	
)	
Plaintiff,)	
)	
v.)	No. 2:22-cv-00223-JPH-MG
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**ORDER DENYING WITHOUT PREJUDICE MOTION
FOR ASSISTANCE WITH RECRUITING COUNSEL**

Plaintiff Juan Antonio Cavazos, Jr., alleges that the United States is liable to him under the Federal Tort Claims Act because prison employees were grossly negligent in handling a COVID-19 outbreak at the United States Penitentiary in Terre Haute, Indiana. Plaintiff now seeks the Court's assistance recruiting counsel. Dkt. 8.

Litigants in federal civil cases do not have a constitutional or statutory right to court-appointed counsel. *Walker v. Price*, 900 F.3d 933, 938 (7th Cir. 2018). Instead, 28 U.S.C. § 1915(e)(1) gives courts the authority to "request" counsel. *Mallard v. United States District Court*, 490 U.S. 296, 300 (1989). As a practical matter, there are not enough lawyers willing and qualified to accept a pro bono assignment in every pro se case. *See Watts v. Kidman*, 42 F.4th 755, 764 (7th Cir. 2022) (explaining that courts must be careful stewards of the limited resource of volunteer lawyers); *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014) ("Whether to recruit an attorney is a difficult decision: Almost everyone

would benefit from having a lawyer, but there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases.").

"When confronted with a request under § 1915(e)(1) for pro bono counsel, the district court is to make the following inquiries: (1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Eagan v. Dempsey*, 987 F.3d 667, 682 (7th Cir. 2021) (quoting *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007)). These two questions "must guide" the Court's determination whether to attempt to recruit counsel. *Id.* These questions require an individualized assessment of the plaintiff, the claims, and the stage of litigation. *See Pruitt*, 503 F.3d at 655-56.

The first question, whether litigants have made a reasonable attempt to secure private counsel on their own, "is a mandatory, threshold inquiry that must be determined before moving to the second inquiry." *Eagan*, 987 F.3d at 682; *see also Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2019) (because plaintiff did not show that he tried to obtain counsel on his own or that he was precluded from doing so, the judge's denial of these requests was not an abuse of discretion). Plaintiff has attempted to contact fifteen attorneys with requests for representation without success. Dkt. 8 at 1. The Court finds that he has made a reasonable effort to recruit counsel on his own before seeking the Court's assistance. He should continue his efforts to find counsel.

"The second inquiry requires consideration of both the factual and legal complexity of the plaintiff's claims and the competence of the plaintiff to litigate

those claims himself." *Eagan*, 987 F.3d at 682 (citing *Pruitt*, 503 F.3d at 655). "The court's competency evaluation should account for 'the plaintiff's literacy, communication skills, educational level, and litigation experience,' and, to the extent that such evidence is before the court, information 'bearing on the plaintiff's intellectual capacity and psychological history.'" *Watts*, 42 F.4th at 760 (quoting *Pruitt*, 503 F.3d at 655). "Specifically, courts should consider 'whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself.'" *Eagan*, 987 F.3d at 682 (quoting *Pruitt*, 503 F.3d at 655). "This assessment of the plaintiff's apparent competence extends beyond the trial stage of proceedings; it must include 'the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial.'" *Id.* (quoting *Pruitt*, 503 F.3d at 655).

In his motion, Plaintiff states that he has a high-school education and no legal training. Dkt. 8 at 1. He also states that he was previously assisted by a "jail-house lawyer" who has been released and that he will likely need to subpoena documents and secure an expert witness to prove his claim. *Id.*

This case is in its early stages, and the defendant has filed a motion to dismiss this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkts. 16, 17. At this stage, the nature of the issues (specifically that the defendant's failure to follow safety protocols caused him to contract COVID-19) do not appear to be complex. Based on Plaintiff's clear and comprehensible filings to date, including the present motion filed without assistance from the

"jail-house lawyer" who assisted him previously, *see* dkt. 8 generally, his use of the Court's processes, the non-complex nature of the issues, and his familiarity with the factual circumstances of his claims, the Court finds that Plaintiff is competent to litigate on his own. If this matter survives to the discovery stage and Plaintiff requires the use of subpoenas to obtain documents held by third parties, he may file a motion at the appropriate time requesting blank subpoenas from the Court.

The Court will not attempt to recruit counsel to represent the plaintiff at this time. Plaintiff's motion for assistance recruiting counsel is **denied without prejudice**. Dkt. [8]. The **clerk is directed** to send Plaintiff a motion for assistance recruiting counsel form, which he must use if he chooses to renew his motion. The Court will remain alert to changes in circumstances that may warrant reconsideration of the motion, such as a settlement conference or trial.

SO ORDERED.

Date: 5/2/2023

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James Patrick Hanlon
United States District Judge
Southern District of Indiana